

REMARKS

The Official Action mailed August 25, 2004, has been received and its contents carefully noted. This response is filed within three months of the mailing date of the Official Action and therefore is believed to be timely without extension of time. Accordingly, the Applicants respectfully submit that this response is being timely filed.

The Applicants note with appreciation the consideration of the Information Disclosure Statements filed on April 12, 2000, June 17, 2002, July 17, 2002, August 14, 2002, January 27, 2003, August 21, 2003, and June 1, 2004. However, the Applicants have not received acknowledgment of the Information Disclosure Statement filed on December 8, 2003. Per the Examiner's request, courtesy copies of the IDS, Form PTO-1449, and stamped receipt card evidencing receipt of the IDS filed December 8, 2003, were faxed to the Examiner on August 16, 2004. The Applicants respectfully request that the Examiner provide an initialed copy of the Form PTO-1449 evidencing consideration of the Information Disclosure Statement filed December 8, 2003. A further Information Disclosure Statement is submitted herewith and consideration of this Information Disclosure Statement is respectfully requested.

Claims 1-14 and 25-64 were pending in the present application prior to the above amendment. Although the Office Action Summary indicates that claims 1-64 were pending, please note that claims 15-24 were canceled in the Amendment filed August 14, 2002. Claims 39-50 have been canceled, and dependent claims 35 and 36 have been amended to correct minor matters of form. Accordingly, claims 1-38 and 51-64 are now pending in the present application, of which claims 1, 2, 25, 26, 51 and 52 are independent. For the reasons set forth in detail below, all claims are believed to be in condition for allowance. Favorable reconsideration is requested.

Paragraph 5 of the Official Action provisionally rejects claims 1-64 under the doctrine of obviousness-type double patenting over claims 1-5, 7-10, 13, 14, 25-27, 31, 32, 37-40 and 65-76 of copending Application No. 09/454,146 to Yamazaki et al., in view of U.S. Patent No. 6,147,451 to Shibata et al. Paragraph 6 of the Official Action

provisionally rejects claims 1-64 under the doctrine of obviousness-type double patenting over claims 1-15 and 46-52 of copending Application No. 10/386,257 to Ohnuma, in view of Shibata.

Initially, MPEP § 804, Section I.B (page 800-19 of the August 2001 Revision) provides the following guidance regarding provisional double-patenting rejections (emphasis added):

The “provisional” double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that “provisional” double patenting rejection is the only rejection remaining in one of the applications. If the “provisional” double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the “provisional” double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

If the “provisional” double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a “provisional” double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

Since a provisional double patenting rejection is the only rejection in the present application, it appears that the examiner should either withdraw the double patenting rejection and permit the present application to issue as a patent, thereby converting the “provisional” double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent or withdraw the rejection in the application with an earlier filing date and permit the other application to issue as a patent, as appropriate. The Applicants respectfully request that the Examiner carefully review the status of the ‘146 and ‘247 applications and the guidance in MPEP § 804 and take appropriate action.

In any event, as stated in MPEP § 804, under the heading "Obviousness-Type," in order to form an obviousness-type double patenting rejection, a claim in the present application must define an invention that is merely an obvious variation of an invention claimed in the prior art patent, and the claimed subject matter must not be patentably distinct from the subject matter claimed in a commonly owned patent. Also, the patent principally underlying the double patenting rejection is not considered prior art.

The Applicants respectfully traverse the obviousness-type double patenting rejection because the claims of the present application are patentably distinct from the claims of the '146 and '247 applications. Specifically, for example, claims 11, 12, 25-38, 47, 48, 61 and 62 recite a coloring layer; claims 51-64 recite different thicknesses of a gate insulating layer; claims 7, 8, 31, 32, 57 and 58 recite impurity concentrations of the n-type impurity regions (b) and (c); and claims 9, 10, 33, 34, 45, 46, 59 and 60 recite materials of films over the gate electrode. Also, independent claims 1, 2, 25, 26, 51 and 52 of the present application recite an active layer and an n-type impurity region. However, the claims of the '146 and '247 applications, either alone or in combination with Shibata, do not appear to teach or suggest at least the above-referenced features of the present invention.

Therefore, the Applicants respectfully submit that the subject application is patentably distinct from the claims of the '146 and '247 applications. Reconsideration of the obviousness-type double patenting rejection is requested.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



Eric J. Robinson
Reg. No. 38,285

Robinson Intellectual Property Law Office, P.C.
PMB 955
21010 Southbank Street
Potomac Falls, Virginia 20165
(571) 434-6789